

ESTTA Tracking number: **ESTTA29323**

Filing date: **03/29/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91163331
<b>Party</b>	Plaintiff SARMAR , L.L.C.  ,
<b>Correspondence Address</b>	ARTHUR J.DEBAUGH SARAMAR, L.L.C. 1000 E. HANES MILL ROAD WINSTON-SALEM, NC 27105
<b>Submission</b>	Motion for Summary Judgment
<b>Filer's Name</b>	Joshua S. Bish
<b>Filer's e-mail</b>	ptoipinbox@reedsmith.com, jburtner@reedsmith.com, jbish@reedsmith.com
<b>Signature</b>	/Joshua S. Bish/
<b>Date</b>	03/29/2005
<b>Attachments</b>	saramotsummary.pdf ( 53 pages )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SARAMAR, L.L.C.,	)	
	)	
Opposer,	)	Opposition No.: 91163307
	)	Mark: X SCENT [and design]
v.	)	
	)	Opposition No.: 91163331
ARCTICSHIELD, INC.,	)	Mark: X SCENT
	)	
Applicant.	)	

**OPPOSER SARAMAR’S COMBINED MOTION FOR SUMMARY  
JUDGMENT AND MEMORANDUM IN SUPPORT THEREOF**

Opposer Saramar, LLC (“Opposer”), pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.127(e), hereby moves for summary judgment against Applicant ArcticShield, Inc. (“Applicant”) in each of the above-captioned Opposition proceedings.<sup>1</sup> It is indisputable that (1) Opposer’s federal trademark registration has priority over both of Applicant’s subject applications, and (2) there is a strong likelihood of confusion between Opposer’s mark and Applicant’s marks, as already determined by the Patent and Trademark Office (“PTO”). Therefore, Opposer is entitled to judgment as a matter of law. The specific grounds for Opposer’s Motion are set forth below.

**I. SUMMARY OF THE UNDISPUTED FACTS**

**A. History of Opposer’s U.S. Trademark Registration**

The relevant facts of these proceedings are straightforward and beyond dispute. Opposer is the owner of U.S. Trademark Registration No. 2,913,784 (“the ‘784 registration”) for

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<sup>1</sup> Opposer has filed concurrently herewith a Motion to Consolidate Opposition Nos. 91163307 and 91163331. This Motion for Summary Judgment applies to both proceedings, whether or not consolidated.

the mark “EX-SCENT” for “thermal underwear, tops and bottoms, shirts, t-shirts, pants, turtlenecks, mock turtlenecks, underwear” in International Class 25. See ‘784 Registration at Exhibit 1. The ‘784 registration issued on December 21, 2004, from U.S. Trademark Application Serial No. 78/110,238, which was an intent-to-use application filed on February 21, 2002. Id.

The PTO allowed the ‘784 registration on June 17, 2003. See Exhibit 2. On December 18, 2003, Opposer filed a Request for Extension of Time to file a Statement of Use. See Exhibit 3. However, because Opposer’s Request was inadvertently and unintentionally filed one day late, the application became abandoned. See Notice of Abandonment dated April 6, 2004, at Exhibit 4. Opposer was unaware of the abandonment until it received the Notice of Abandonment from the PTO. On May 19, 2004, Opposer properly filed a Petition to Revive Pursuant to 37 C.F.R. § 2.66, including the necessary fees and documentation, and stating that its failure to timely file a Statement of Use or Request for Extension “was unintentional and [Opposer] had no intention of abandoning this trademark application.” See Exhibit 5. Accordingly, the application was revived on September 20, 2004 (see Exhibit 6) and issued as the ‘784 registration on December 21, 2004. The ‘784 registration is valid and subsisting and properly claims priority to its effective filing date of February 21, 2002.

#### **B. History of Applicant’s Trademark Registrations**

Applicant is the owner of U.S. Trademark Application Serial No. 76/509,381 for the mark “X SCENT” and U.S. Trademark Application Serial No. 76/509,382 for the mark “X SCENT and design,” both for “clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls,” in International Class 25, and which are the two subject applications in these proceedings. See Exhibits 7 and 8. These applications were both filed as intent-to-use applications on April 25, 2003, more than one year after Opposer’s filing date of its application for the ‘784 registration. Id. The PTO refused registration of both of

Applicant's marks, based at least in part on a likelihood of confusion with Opposer's pending application. See Exhibit 9. However, after Opposer's application was temporarily abandoned (and after Opposer's Petition to Revive was filed), the PTO approved and published Applicant's applications. See Exhibits 7 and 8. Applicant alleges a date of first use of both marks in August 2003. See Applicant's Answers at ¶ 15. However, that date is not only immaterial to these proceedings but it is also well after Opposer's filing date of February 21, 2002.

Based on its issued '784 registration, Opposer filed the present Oppositions on November 23, 2004.<sup>2</sup>

## **II. SUMMARY OF THE LAW**

### **A. Legal Standards For Summary Judgment**

Summary judgment is appropriate when the moving party has established that there is no genuine issue as to any material fact and that, under those facts, the moving party is entitled to judgment as a matter of law. Lincoln Logs Ltd. v. Lincoln Pre-Cut Log Homes, Inc., 971 F.2d 732, 734 (Fed. Cir. 1992) (affirming TTAB's granting of opposer's motion for summary judgment).

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<sup>2</sup> Opposer acknowledges that Applicant served discovery requests on February 24, 2005, and that responses are ostensibly due on March 31, 2005. However, pursuant to 37 C.F.R. § 2.127(d), both Opposition proceedings should be suspended as of the filing date of this potentially dispositive motion. Leeds Technologies Ltd. v. Topaz Communications Ltd., 65 USPQ2d 1303, 1306 (TTAB 2002) (parties not required to respond to discovery requests even though official suspension notice was not yet received because "the filing of such a [dispositive] motion generally will provide parties with good cause to cease or defer activities unrelated to the briefing of such motion"). In the event the Board denies this motion, Opposer reserves the right to object and respond fully to Applicant's discovery requests. Id.

## **B. Legal Standards For Trademark Opposition**

To prevail in an Opposition proceeding, an opposer must establish that it will be damaged by registration of the subject mark on the principal register. 15 U.S.C. § 1063 (1999); 37 C.F.R. § 2.101 *et seq.* (2003). Grounds for opposition are the same as those for denial of registration, including likelihood of confusion. See, e.g., Jewelers Vigilance Committee, Inc. v. Ullenberg Corp., 823 F.2d 490, 493 (Fed. Cir. 1987) (“[T]he opposer is entitled to rely on any of the grounds set forth in section 2 of the Lanham Act which negate applicant’s right to its subject registration.”); Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) at § 309.03(c) (2d ed. 2003).

Thus, in the present case, Opposer must prevail if it shows that its ‘784 registration has priority over Applicant’s applications and that there is a likelihood of confusion between Opposer’s mark and Applicant’s marks.

### **1. Priority**

As noted in the Trademark Manual of Examining Procedure, priority between conflicting applications is based on the effective filing dates of the respective applications:

#### **1208.01 Priority for Publication or Issue Based on Effective Filing Date**

*In ex parte examination, priority among conflicting pending applications is determined based on the effective filing dates of the applications, without regard to whether the dates of use in a later-filed application are earlier than the filing date or dates of use of an earlier-filed application, whether the applicant in a later-filed application owns a registration for a mark that would be considered a bar to registration of the earlier-filed application, or whether an application was filed on the basis of use of the mark in commerce or a bona fide intent to use the mark in commerce.*

Trademark Manual of Examining Procedure (“TMEP”) at § 1208.01 (3d ed. 2002); see also 37 C.F.R. § 2.83(a).

## 2. Likelihood of Confusion

As the Federal Circuit has noted:

“Whether likelihood of confusion exists is a question of law, based on underlying factual determinations. . . . The Board determines likelihood of confusion on a case-specific basis, using the factors set forth in *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). . . . While it must consider each factor for which it has evidence, the Board may focus its analysis on dispositive factors, such as similarity of the marks and relatedness of the goods.”

Han Beauty, Inc. v. Alberto-Culver Co., 236 F.3d 1333, 1336 (Fed. Cir. 2001) (citations and quotations omitted) (emphasis added). Moreover,

“[t]he authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which sales of the goods are directed.”

Octocom Systems, Inc. v. Houston Computer Services, Inc., 918 F.2d 937, 942 (Fed. Cir. 1990) (affirming TTAB’s granting of opposer’s motion for summary judgment); see also Bongrain Int’l American Corp. v. Moquet Ltd., 230 USPQ 626, 628 (TTAB 1986) (channels of trade or classes of purchasers “are immaterial to the issue of likelihood of confusion in a proceeding such as this”).

Thus, in the present case, the Board may determine likelihood of confusion (a legal determination) on summary judgment based solely on the similarity of the marks and the relatedness of the goods since Applicant’s recited goods are not restricted to any particular channel of trade or class of purchasers.

### C. **Effect of Abandonment and Revival of Opposer’s Earlier-Filed Application**

A trademark application that has been unintentionally abandoned may be revived if certain conditions are met. Specifically, 37 C.F.R. § 2.66 provides in relevant part:

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:

- (1) Within two months of the mailing date of the notice of abandonment; or
- (2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application every six months in accordance with § 2.146(i).

\* \* \*

(c) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance are:

- (1) The petition fee required by § 2.6;
- (2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional;
- (3) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;
- (4) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, either a statement of use under § 2.88 or a request for an extension of time to file a statement of use under § 2.89; and
- (5) Unless a statement of use is filed with or before the petition, or the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

37 C.F.R. § 2.66 (2003).

Moreover, revived applications can bar the registration of applications filed subsequent to the filing date of the revived application. Section 1208.01(d) of the TMEP provides:

**1208.01(d) Examination of Conflicting Marks After Reinstatement or Revival**

When an abandoned application is revived or reinstated (*see* TMEP §§1712.01, 1713 and 1714 *et seq.*), the examining attorney must conduct a new search to determine whether any later-filed applications for conflicting marks have been approved for publication or registration, and place the search strategy in the file.

If a later-filed application has been approved, the examining attorney should inform the examining attorney who approved the later-filed application that the earlier-filed application has been revived, if necessary. *If the later-filed application has been published, the examining attorney handling that application should request jurisdiction (see TMEP §1504.04(a)) and suspend the application pending disposition of the earlier-filed application that was revived or reinstated.*

If a later-filed application for a conflicting mark has matured into registration, the examining attorney must refuse registration of the revived or reinstated application under §2(d), even though the application for the registered mark was filed after the revived or reinstated application. The Office does not have the authority to cancel the registration.

TMEP § 1208.01(d) (emphasis added).

Thus, it is clear from the foregoing that an earlier-filed application – including an earlier-filed application that was unintentionally abandoned and properly revived – has priority over a later-filed conflicting application, and that the PTO has the authority to, and indeed is required to, deny registration of the later-filed conflicting application.

**III. ARGUMENT**

Applying the foregoing law to the undisputed facts of these proceedings, it is clear that Opposer is entitled to summary judgment.



**A. Opposer's '784 Registration Has Priority Over Applicant's Applications**

Applicant attempts to argue in its Answers that Opposer's '784 registration does not have priority over the subject applications. See Applicant's Answers at ¶¶ 15-18. However, that clearly and indisputably is not the case. The effective filing date of the '784 registration is February 21, 2002. See Exhibit 1. The effective filing date of the subject applications is April 25, 2003. See Exhibits 7 and 8. Applicant does not and cannot dispute that Opposer filed first.

The temporary and unintentional abandonment of Opposer's application is immaterial because it was properly revived – as evidenced by the resulting issuance of the '784 registration. TMEP at § 1208.01(d). Likewise, Applicant's dates of first use for its marks are immaterial because they occurred after the effective filing date of Opposer's '784 registration. Id. at § 1208.01; 37 C.F.R. § 2.83(a).

Accordingly, Opposer's '784 registration has priority over Applicant's subject applications and may act as a bar to registration of those applications. Applicant can prove no set of facts otherwise, and Opposer is therefore entitled to summary judgment.

**B. Applicant's Applications Are Confusingly Similar To Opposer's '784 Registration**

Likewise, no reasonable fact finder could find that Applicant's "X SCENT" and "X SCENT and design" marks are not confusingly similar to Opposer's "EX-SCENT" mark. The marks are identical in sound and connotation, and are virtually identical in spelling. Both marks have the identical dominant portion, preceded by identical beginning sounds conveying the same connotation, *i.e.*, masking scents. See Oakley, Inc. v. Costa Del Mar Sunglasses, Inc., 2004 TTAB LEXIS 589, \*15 (TTAB Oct. 4, 2004) (finding likelihood of confusion between opposer's "X METAL" mark and applicant's "EX-FRAME" mark for sunglasses because they are "similar in sound, appearance, connotation and commercial impression") (non-precedential, cited for informational purposes only). Also, the respective goods are nearly identical as they

include highly similar types of clothing in International Class 25. Tellingly, the PTO even initially rejected Applicant's applications over Opposer's application when it was still pending, based on a potential likelihood of confusion. See Exhibit 9.

The Federal Circuit and TTAB have consistently held that the question of likelihood of confusion can be determined on summary judgment. See, e.g., Octocom, 918 F.2d at 943 (finding on summary judgment that "purchasers would likely be confused when goods as closely related as modems and computer programs are sold under the virtually identical marks of these parties"); U.S. Olympic Committee v. Organization for Sport Aviation Competition, 2002 TTAB LEXIS 195, \*8-\*11 (TTAB March 8, 2002) (finding on summary judgment that parties' marks (OLYMPIC versus SKYLYMPICS) "are highly similar in sound and appearance" and parties' services "are closely related"); Kiko Foods, Inc. v. Land O'Lakes, Inc., 1996 TTAB LEXIS 87, \*11 (TTAB June 6, 1996) ("There can be no doubt that the marks involved [PLUS+3 versus PLUS THREE] are virtually identical . . . . Nor can there be any disagreement but that the goods of the parties, as originally described, are virtually identical."); Bongrain, 230 USPQ at 627-28 (finding likelihood of confusion on summary judgment where opposer's goods were "cheeses" and applicant's goods were "wine").

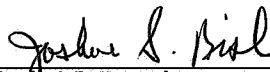
Based on the dispositive and indisputable factors of the present case, there is clearly a likelihood of confusion between Opposer's mark and Applicant's mark, and registration of Applicant's marks cannot stand. Again, Applicant can prove no set of facts otherwise, and Opposer is therefore entitled to summary judgment.

#### IV. CONCLUSION

For the foregoing reasons, Opposer respectfully requests that its Motion For Summary Judgment be granted and that Applicant's marks be denied registration.

Respectfully submitted,

Dated: March 29, 2005

  
\_\_\_\_\_  
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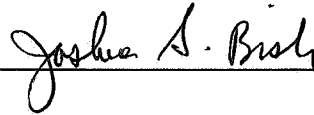
Nicholas J. Valenziano, Jr.  
1000 East Hanes Mill Road  
Winston-Salem, NC 27105  
(336) 519-7450

Attorneys for Opposer Saramar, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused the foregoing **OPPOSER**  
**SARAMAR'S COMBINED MOTION FOR SUMMARY JUDGMENT AND**  
**MEMORANDUM IN SUPPORT THEREOF** to be served on counsel for Applicant on March  
29, 2005, by first-class mail, postage prepaid, at the following address:

Frank J. Catalano, Esq.  
GABLE & GOTWALS  
100 West Fifth Street, 10<sup>th</sup> Floor  
Tulsa, OK 74103-4217

  
\_\_\_\_\_

- EXHIBIT 1 -

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**United States Patent and Trademark Office**

**Reg. No. 2,913,784**

**Registered Dec. 21, 2004**

**TRADEMARK  
PRINCIPAL REGISTER**

**EX-SCENT**

**SARAMAR, L.L.C. (DELAWARE LIMITED LIABILITY COMPANY)  
10 SOUTH RIVERSIDE PLAZA  
CHICAGO, IL 60606**

**FIRST USE 12-31-2003; IN COMMERCE 12-31-2003.**

**SN 78-110,238, FILED 2-21-2002.**

**FOR: THERMAL UNDERWEAR, TOPS AND BOTTOMS, SHIRTS, T-SHIRTS, PANTS, TURTLENECKS, MOCK TURTLENECKS, UNDERWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).**

**AMY HELLA, EXAMINING ATTORNEY**

EXHIBIT 2

**U.S. Patent and Trademark Office (PTO)**  
**NOTICE OF ALLOWANCE**

(NOTE: If any data on this notice is incorrect, please submit a written request for correction of the NOA to: Assistant Commissioner for Trademarks, Box ITU, 2900 Crystal Drive, Arlington, VA 22202-3513. Please include the serial number of your application on ALL correspondence with the PTO. 15 U.S.C. 1063(b)(2))

**ISSUE DATE OF NOA:** Jun 17, 2003

ARTHUR J. DEBAUGH  
1000 E HANES MILL RD  
WINSTON SALEM NC 27105-1384

ATTORNEY  
REFERENCE NUMBER  
0210029 / J.

**\*\* IMPORTANT INFORMATION: 6 MONTH DEADLINE \*\***

To avoid ABANDONMENT of this application, either a "Statement of Use" (a.k.a. "Allegation of Use") or a "Request for Extension of Time to File a Statement of Use" (a.k.a. "Extension Request") and the appropriate fee(s) must be received in the PTO within six months of the issue date of this Notice of Allowance (NOA) for those goods and/or services based on intent to use. Failure to do so will result in the ABANDONMENT of this application.

Please note that both the "Statement of Use" and "Extension Request" have many legal requirements, including fees. These requirements are explained in the PTO booklet "Basic Facts About Trademarks", which can be obtained upon request at (703)308-9000. In addition, there are printed forms contained in this booklet (for "Statement of Use" and "Extension Requests") for your use.

**The following information should be reviewed for accuracy:**

SERIAL NUMBER: 78/110238  
MARK: EX-SCENT  
OWNER: Samar, L.L.C.  
125 South Wacker Drive, Suite 300  
Chicago, ILLINOIS 60606

This application has the following bases, but not necessarily for all listed goods/services:

Section 1(a): NO

Section 1(b): YES

Section 44(e): NO

**GOODS/SERVICES BY INTERNATIONAL CLASS**

025 - thermal underwear, tops and bottoms, shirts, t-shirts, pants, turtle necks, mock turtle necks, underwear

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED



— EXHIBIT 3 —

## Extension Statement of Use Filing

The table below presents the data as entered.

<b>SERIAL NUMBER</b>		78110238
<b>LAW OFFICE ASSIGNED</b>		LAW OFFICE 110
<b>MARK SECTION</b>		
<b>MARK</b>		EX-SCENT
<b>OWNER SECTION (current)</b>		
<b>NAME</b>		Samarar, L.L.C.
<b>STREET</b>		125 South Wacker Drive, Suite 300
<b>CITY</b>		Chicago
<b>STATE</b>		IL
<b>ZIP/POSTAL CODE</b>		60606
<b>COUNTRY</b>		US
<b>OWNER SECTION (proposed)</b>		
<b>NAME</b>		Samarar, L.L.C.
<b>STREET</b>		10 South Riverside Plaza
<b>CITY</b>		Chicago
<b>STATE</b>		IL
<b>ZIP/POSTAL CODE</b>		60606
<b>COUNTRY</b>		US
<b>PHONE</b>		336-519-7407
<b>FAX</b>		336-519-7312
<b>GOODS AND/OR SERVICES SECTION</b>		
<b>INTERNATIONAL CLASS</b>		025
<b>KEEP EXISTING GOODS AND/OR SERVICES</b>		YES
<b>EXTENSION SECTION</b>		
<b>EXTENSION NUMBER</b>		1
<b>ALLOWANCE MAIL DATE</b>		06/24/2003
<b>STATEMENT OF USE</b>		NO

PAYMENT SECTION	
NUMBER OF CLASSES	1
SUBTOTAL AMOUNT	150
TOTAL AMOUNT	150
SIGNATURE SECTION	
SIGNATURE	/chrystal m. pettitt/
SIGNATORY NAME	Chrystal M. Pettitt
SIGNATORY DATE	12/18/2003
SIGNATORY POSITION	Trademark Application Specialist
FILING INFORMATION	
SUBMIT DATE	Thu Dec 18 12:02:21 EST 2003
TEAS STAMP	USPTO/ESU-172.30.230.5-20 031218120221078070-781102 38-200bd3b5a8cd1df0657b96 8f4088b38cDA965-200312181 20136966102

PTO Form 1581 (Rev. 4/2000)

OMB Control #0651-0909 (Exp. 06/30/2005)

### Trademark/Service Mark Extension for Filing a Statement of Use (15 U.S.C. Section 1051(d))

To the Commissioner for Trademarks:

**MARK:** EX-SCENT

**SERIAL NUMBER:** 78110238

The applicant, Saramar, L.L.C., residing at 10 South Riverside Plaza, Chicago, IL US 60606, requests a six-month extension of time to file the Statement of Use under 37 C.F.R. Section 2.89 in this application. The Notice of Allowance mailing date was 06/24/2003.

For International Class: 025, the applicant has a continued bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with all of the goods and/or services listed in the Notice of Allowance, or as subsequently modified.

This is the first extension request.

A fee payment in the amount of \$150 will be submitted with the form, representing payment for 1 class.

#### Declaration

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature: /chrystal m. pettitt/ Date: 12/18/2003  
Signatory's Name: Chrystal M. Pettitt  
Signatory's Position: Trademark Application Specialist

RAM Sale Number: 965  
RAM Accounting Date: 12/18/2003


Serial Number: 78110238  
Internet Transmission Date: Thu Dec 18 12:02:21 EST 2003  
TEAS Stamp: USPTO/ESU-172.30.230.5-20031218120221078  
070-78110238-200bd3b5a8cd1df0657b968f408  
8b38cDA965-20031218120136966102  
[Go Back](#)

**FEE RECORD SHEET****Serial Number: 78110238****RAM Sale Number: 965****Total Fees: \$150****RAM Accounting Date: 20031218**

<b><u>Transaction</u></b>	<b><u>Fee Code</u></b>	<b><u>Transaction Date</u></b>	<b><u>Fee per Class</u></b>	<b><u>Number of Classes</u></b>	<b><u>Total Fee</u></b>
Extension Request for SOU	7004	12/18/2003	\$150	1	\$150

- EXHIBIT 4 -

Side - 1

 <p><b>UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<p>NOTICE OF ABANDONMENT ISSUE DATE: 04-06-2004</p>
<p>The trademark application identified below was abandoned because the applicant failed to file for a statement of use or an extension of time.</p> <p>If the delay in filing a response was unintentional, you may file a petition to revive the application with a fee. If the abandonment of this application was due to USPTO error, you may file a request for reinstatement. Please note that a petition to revive or request for reinstatement <b>must be received within two months from the issue date of this notice.</b></p> <p>For additional information, go to <a href="http://www.uspto.gov/teas/petinfo.htm">http://www.uspto.gov/teas/petinfo.htm</a>. If you are unable to get the information you need from the website, call the Trademark Assistance Center at 703-308-9000.</p> <p><b>SERIAL NUMBER:</b> 78110238 <b>MARK:</b> EX-SCENT</p>	

Side - 2

<p>UNITED STATES PATENT AND TRADEMARK OFFICE COMMISSIONER FOR TRADEMARKS 2900 CRYSTAL DRIVE ARLINGTON, VA 22202-3514</p> <p>ARTHUR J DEBAUGH 1000 E HANES MILL RD WINSTON SALEM , NC 27105-1384</p>	<p>FIRST-CLASS MAIL U.S POSTAGE PAID</p>
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EXHIBIT 5



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: EX-SCENT  
Serial No.: 78/110238  
Filing Date: February 21, 2002  
Class: 25  
Applicant: Saramar, L.L.C.

To: Assistant Commissioner for Trademarks  
Box RESPONSES/NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

**PETITION TO REVIVE PURSUANT TO 37 C.F.R. §2.66**

Applicant respectfully responds to the Notice of Abandonment of April 04, 2004 for this application and, pursuant to 37 C.F.R. §2.66, petitions for its revival. This application was deemed abandoned because the Applicant failed to file a Statement of Use or request for an Extension of Time to file a Statement of Use. The failure to file the Statement of Use or request an Extension of Time to file a Statement of Use was unintentional and Applicant had no intention of abandoning this trademark application.

Revival of the application is earnestly requested. Applicant encloses a request for an Extension of Time to file the Statement of Use and filing fee of \$150 that was due on December 24, 2003 and the Statement of Use that will be due on June 24, 2004 and the filing fee of \$150.



05-26-2004

U.S. Patent & TMO's/TM Mail Rpt Dt. #72

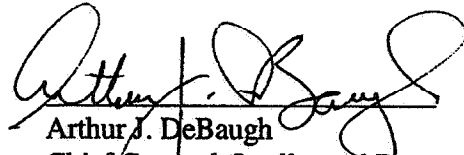
EX-SCENT  
78/110238

Please charge PTO Account Number 190143 the amount of \$100 required to cover the cost of the Petition to Revive, as well as \$150 to cover the extension to file a Statement of Use, which was due December 24, 2003 and \$100 the Statement of Use that will be due on June 24, 2004.

Respectfully submitted,

SARAMAR, L.L.C.

Date: 19 May 2004

  
Arthur J. DeBaugh  
Chief Counsel, Intellectual Property  
Sara Lee Corporation  
1000 East Hanes Mill Road  
Winston-Salem, NC 27105  
(336) 519-7407

I hereby certify that this correspondence is being deposited with the US Postal Service as first class mail with sufficient postage in an envelope addressed to:  
Asst. Commissioner for Trademarks,  
US Patent & Trademark Office, 2900  
Crystal Drive, Arlington, VA 22202-3514,  
On: May 20, 2004  
Christal Pettitt  
Christal N. Pettitt  
Date: May 20, 2004

**~REQUEST FOR EXTENSION OF TIME TO FILE A STATEMENT OF USE (15 U.S.C. § 1051(d))~**

~To the Commissioner for Trademarks~

**<TRADEMARK/SERVICEMARK INFORMATION>**

<Mark> EX-SCENT

<Serial Number> 78/110238

**<APPLICANT INFORMATION>**

<Name> Saramar, L.L.C.

<Street> 10 South Riverside Plaza

<City> Chicago

<State> IL

<Country> USA

<Zip/Postal Code> 60606

**<NOTICE OF ALLOWANCE INFORMATION>**

<Notice of Allowance Mailing Date> 06-24-2003 ~Enter date in the format MM/DD/YYYY.~

**<GOODS AND/OR SERVICES INFORMATION>**

<All Goods and/or Services in Notice of Allowance>~The applicant has a continued bona fide intention to use or use through a related company the mark in commerce on or in connection with all the goods and/or services listed in the Notice of Allowance. If not, list in the next section the goods and/or services to be deleted.~ yes

<Goods and/or Services to be Deleted>~In following space, list only those goods/services (or entire class(es)) appearing in the Notice of Allowance for which the applicant does not have a continued bona fide intention to use the mark in commerce. **LEAVE THIS SPACE BLANK IF THE APPLICANT DOES HAVE A CONTINUED BONA FIDE INTENTION TO USE THE MARK IN COMMERCE ON OR IN CONNECTION WITH ALL GOODS/SERVICES LISTED IN THE NOTICE OF ALLOWANCE.**~

**<EXTENSION REQUEST INFORMATION>~**

<Number of Extension Request> 1 ~Enter which request (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup>) this is following the mailing of the Notice of Allowance.~

**<ONGOING EFFORTS TO USE MARK IN COMMERCE>~Applies to 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> extension requests only.~**

~The applicant has made the following ongoing efforts to use the mark in commerce on or in connection with those goods and/or services for which use of the mark in commerce has not yet been made.~

<Explanation> Continued market research/product development.

O:Chrystal Pettitt COMPANY:

**<STATEMENT OF USE SUBMITTED>**~if applicable~ YES

**<Additional Time Requested>**~Enter YES if you believe the applicant has made valid use of the mark in commerce, as evidenced by the Statement of Use submitted with this request. If the Statement of Use does not meet the requirements of 37 C.F.R. 2.88, you request additional time to correct the Statement of Use. If not, enter NO.~

**<FEE INFORMATION>**

\$150.00 x <Number of Classes> \$150 = <Total Filing Fee Paid> \$150

**<SIGNATURE INFORMATION>**

~Applicant is entitled to use the mark sought to be registered and has a continued bona fide intention to use the mark in commerce on or in connection with all the goods and/or services listed in the Notice of Allowance. Applicant requests a six-month extension of time to file the Statement of Use under 37 CFR 2.89.~

The undersigned, being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Applicant; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.~

~Signature~ Chrystal M. Pettitt

<Date Signed>

<Name> Chrystal M. Pettitt

<Title> Trademark Application Specialist

**<CONTACT INFORMATION>**

<Name> Arthur J. DeBaugh, Esq.

<Company/Firm Name> Sara Lee Corporation

<Street> 1000 East Hanes Mill Road

<City> Winston-Salem

<State> NC

<Country> USA

<Zip/Postal Code> 27105

<Telephone Number> 336-519-7407

<Fax Number> 336-519-7312

<e-Mail Address> cpettitt@saralee.com / adebaugh@saralee.com

**<CERTIFICATE OF MAILING>**~Recommended to avoid lateness due to mail delay.~

~I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on~

<Date of Deposit> May 20, 2004

~Signature~ Chrystal M. Pettitt

<Name> Chrystal M. Pettitt

The information collected on this form allows an applicant to demonstrate that it has commenced use of the mark in commerce regulable by Congress. With respect to applications filed on the basis of an intent to use the mark, responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental Register 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated thirteen minutes. Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number. (See bottom left side of this form).

**~TRADEMARK/SERVICE MARK ALLEGATION OF USE (Statement of Use/  
Amendment to Allege Use) (15 U.S.C. § 1051(c) or (d))~**

~To the Commissioner for Trademarks~

**<TRADEMARK/SERVICEMARK INFORMATION>**

<Mark> EX-SCENT  
<Serial Number> 78/110238

**<APPLICANT INFORMATION>**

<Name> Saramar, L.L.C.  
<Street> 10 South Riverside Plaza  
<City> Chicago  
<State> IL  
<Country> USA  
<Zip/Postal Code> 60606

**<NOTICE OF ALLOWANCE INFORMATION>**

<Notice of Allowance> YES ~Enter YES if you are filing the Allegation of Use after a Notice of Allowance has issued. If not, enter NO.~

**<GOODS AND/OR SERVICES INFORMATION>**

<All Goods and/or Services in Application/Notice of Allowance>~The owner is using or using through a related company the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance. If not, list in the next section the goods and/or services not in use to be deleted.~

<Goods and/or Services Not in Use to be Deleted>~In the following space, list only those goods and/or services (and/or entire class(es)) appearing in the application or Notice of Allowance for which the owner is not using the mark in commerce. LEAVE THIS SPACE BLANK IF THE OWNER IS USING THE MARK ON OR IN CONNECTION WITH ALL THE GOODS AND/OR SERVICES LISTED IN THE APPLICATION OR NOTICE OF ALLOWANCE.~

**<USE INFORMATION>**

<Date of First Use Anywhere> 12/31/2003  
<Date of First Use in Commerce> 12/31/2003

**<OPTIONAL - REQUEST TO DIVIDE INFORMATION>**

<Request to Divide> ~Enter YES if you are submitting a request to divide with this document. If not, enter NO.~

**<FEE INFORMATION>**

**\$100.00 x <Number of Classes> \$100 = <Total Fees Paid> \$100**

**<SPECIMEN AND SIGNATURE INFORMATION>**

*~Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.*

**(You MUST ATTACH A SPECIMEN showing the mark as used in commerce for at least one product or service in each international class covered.)**

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner, and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.~

~Signature~

*Chrystal M. Pettitt*

<Date Signed> May 20, 2004

<Name> Chrystal M. Pettitt

<Title> Trademark Application Specialist

**<CONTACT INFORMATION>**

<Name> Arthur J. DeBaugh, Esq.

<Company/Firm Name> Sara Lee Corporation

<Street> 1000 East Hanes Mill Road

<City> Winston-Salem

<State> NC

<Country> USA

<Zip/Postal Code> 27105

<Telephone Number> 336-519-7407

<Fax Number> 336-519-7312

<e-Mail Address> cpettitt@saralee.com / adebaugh@saralee.com

**<CERTIFICATE OF MAILING> ~Recommended to avoid lateness due to mail delay.~**

**~I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514, on~**

<Date of Deposit> May 20, 2004

~Signature~

*Chrystal M. Pettitt*

<Name> Chrystal M. Pettitt

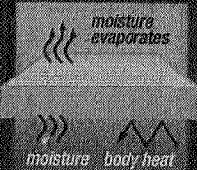
The information collected on this form allows an applicant to demonstrate that it has commenced use of the mark in commerce registrable by Congress. With respect to applications filed on the basis of an intent to use the mark, responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental Register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated thirteen minutes. Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number. (See bottom left side of this form).

# MORGAN ULTRA THERM EX-SCENT™

Morgan EX-SCENT™ All-Season Hunting Base Layer garments have been engineered to keep you warm and dry during cold weather activities such as hunting, fishing, hiking and many other active outdoor sports.

- The Ex-Scent™ fibers aid in the control of the human body scent for enhanced concealment while hunting.

- Versatile lightweight rib knit Ex-Scent™ fabric fits comfortably close to the body for maximum skin contact, creating the ideal base layer for the active sportsman.



- Vapor and moisture exit through the Ex-Scent rib knit fabric, away from the skin, into outer layers where it can evaporate. Drier and more comfortable, you can perform at your peak through higher levels of aerobic activity.

- Reinforced seam construction for extra strength and durability.

- Shape retaining, double layer rib knit cuffs for secure fit.

- Shrinkage controlled for lasting size and shape.

Size/Talla	M/M	L/G	XL/JEG
Chest	36-40	42-44	46-48
Pecho	97-102	107-112	117-122
Waist	34-36	38-40	42-44
Cintura	86-91	97-102	107-112

Machine wash warm with like colors. Use only non-chlorine bleach when needed. Tumble dry low. Warm iron if desired.  
Lavar en lavadora con agua tibia con colores similares. Usar solamente blanqueador sin cloro. Secar en secadora, ciclo lento. Plancha tibia si se desea.

## WEATHER/ACTIVITY USE CHART

WEATHER RANGE		
COLD	VERY COLD	EXTRA COLD
ACTIVITY LEVEL		
LOW	MEDIUM	HIGH

100% polyester/políester

RN 13852  
www.e-morgan.com  
©2003 Morgan

EX-SCENT™ ALL-SEASON HUNTING BASE LAYER

# MORGAN ULTRA THERM EX-SCENT™

ALL-SEASON HUNTING BASE LAYER

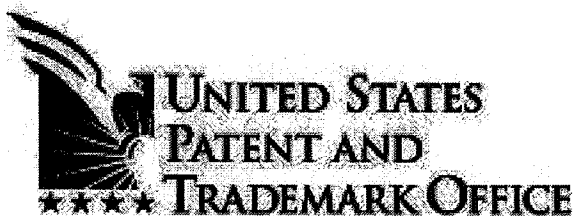
ODOR BLOCKING EX-SCENT™ FIBERS  
FOR ENHANCED CONCEALMENT

LIGHTWEIGHT RIB KNIT FABRIC  
MOVES MOISTURE FOR  
DRY COMFORT & WARMTH



EXHIBIT 6





Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
[www.uspto.gov](http://www.uspto.gov)

### NOTICE OF REVIVAL OF APPLICATION

ARTHUR J. DEBAUGH  
1000 E HANES MILL RD  
WINSTON SALEM NC 27105-1384

<b>SERIAL NUMBER:</b>	78/110238
<b>MARK:</b>	EX-SCENT
<b>OWNER:</b>	Samar, L.L.C.
<b>REVIVAL DATE:</b>	September 20, 2004

The above referenced application was revived on the date shown above.

The file will be forwarded to the appropriate section of the Office for further action. For example, if the abandonment resulted from failure to timely file a response to an Office Action, your file will be forwarded to the Examining Attorney; if the abandonment resulted from a failure to timely file a Statement of Use or Extension of Time to File a Statement of Use, your file will be forwarded to the Intent to Use Section.

To verify the status and location of your application, please wait approximately three weeks, then check the Trademark Application and Registration Retrieval (TARR) system located at the USPTO website: [www.uspto.gov](http://www.uspto.gov), or call the Trademark Status Line at 703-305-8747.

ORIGINAL

EXHIBIT 7

**Drawing Page**

**Date/Time Stamp:** Thursday, 04-24-2003 10:17:37 EDT



04-25-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #67

**Applicant:**

ARCTICSHIELD, INC.  
905 S. 9th, Suite D  
Broken Arrow, OK 74012  
USA

**Date of First Use Anywhere: Intent-To-Use (Section 1(b))**

**Date of First Use In Commerce: Intent-To-Use (Section 1(b))**

**Goods and Services:**

Clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls

**Mark:**

X SCENT

U.S. Patent & TM Ofc/TM



**76509381**

**76509381**

TRADEMARK APPLICATION SERIAL NO. \_\_\_\_\_

**U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET**

04/30/2003 KGIBBONS 00000032 76509381

01 FC:6001

335.00 OP

**FRANK J. CATALANO, P.C.**  
Patent, Trademark & Copyright Attorney  
The Avanti Building ■ 810 South Cincinnati ■ Suite 405  
Tulsa, Oklahoma 74119-1612  
Telephone (918) 584-8787  
Facsimile (918) 599-9889

April 24, 2003

**Box NEW APP FEE**  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: Application for Registration of Mark: X SCENT  
Based on *Bona Fide* Intent-to-Use the Mark in Commerce  
Applicant: ARCTICSHIELD, INC.  
Reference No.: 2299.03C

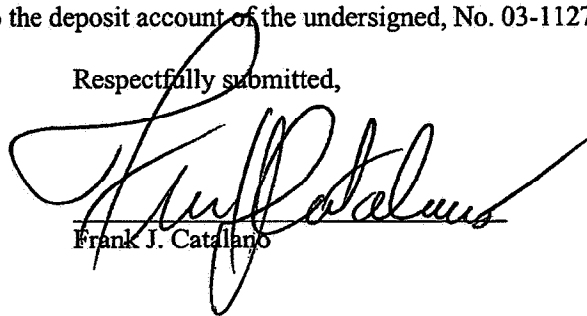
Dear Sir:

Enclosed please find the following for registering the above-referenced mark based on the Applicant's *bona fide* intent to use the mark in commerce:

- \* Application for registration based on Intent-to-Use pursuant to Section 1(b) of the Lanham Act;
- \* Power of Attorney;
- \* Signed Declaration in Support of Registration;
- \* Drawing Page;
- \* Check in the amount of \$335, the fee for filing this application; and
- \* A Return-Addressed Post Card.

Please send all communications to Frank J. Catalano. The Commissioner is authorized to charge any additional costs or credit any overpayments to the deposit account of the undersigned, No. 03-1127.

Respectfully submitted,



Frank J. Catalano

FJC:ms  
Enclosures  
EXPRESS MAIL #ET229398981US

PTO Form 1478 (Rev 9/98)  
OMB Control #0651-0009 (Exp. 08/31/2004)

## **\*Trademark/Service Mark Application\***

**\* To the Commissioner for Trademarks \***

<DOCUMENT INFORMATION>  
<TRADEMARK/SERVICEMARK APPLICATION>  
<VERSION 1.22>

<APPLICANT INFORMATION>  
<NAME> ARCTICSHIELD, INC.  
<STREET> 905 S. 9th, Suite D  
<CITY> Broken Arrow  
<STATE> OK  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 74012

<APPLICANT ENTITY INFORMATION>  
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Oklahoma

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> X SCENT

<TYPED FORM> Yes  
~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). ~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>  
<INTENT TO USE: SECTION 1(b)> Yes  
~ Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(b), as amended.) ~  
<INTERNATIONAL CLASS NUMBER> 025  
<LISTING OF GOODS AND/OR SERVICES> Clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls

<ATTORNEY INFORMATION>  
<NAME> Frank J. Catalano  
<STREET> 810 S. Cincinnati, Suite 405  
<CITY> Tulsa  
<STATE> OK  
<COUNTRY> USA

<ZIP/POSTAL CODE> 74119  
<FIRM NAME> Frank J. Catalano, P.C.  
<TELEPHONE NUMBER> (918) 584-8787  
<FAX NUMBER> (918) 599-9889  
<ATTORNEY DOCKET NUMBER> 2299.03C

<FEE INFORMATION>  
<TOTAL FEES PAID> 335.00  
<NUMBER OF CLASSES PAID> 1  
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>  
<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>

~ **PTO-Application Declaration:** The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. ~

<SIGNATURE> Dave W. Gordon \* please sign here \*

<DATE> 4-24-03

<NAME> Dave W. Gordon

<TITLE> CEO

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental register, and provides notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 12 or 18 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.

EXHIBIT 8



**Drawing Page**

**Date/Time Stamp:** Thursday, 04-24-2003 10:34:20 EDT



04-25-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #67

**Applicant:**

ARCTICSHIELD, INC.  
905 S. 9th, Suite D  
Broken Arrow, OK 74012  
USA

**Date of First Use Anywhere: Intent-To-Use (Section 1(b))**

**Date of First Use In Commerce: Intent-To-Use (Section 1(b))**

**Goods and Services:**

Clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls

**Mark:**



U.S. Patent & TM Ofc/TM



**76509382**

**76509382**

TRADEMARK APPLICATION SERIAL NO. \_\_\_\_\_

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE  
FEE RECORD SHEET

04/30/2003 KGIBBONS 00000033 76509382

01 FC:6001

335.00 OP

**FRANK J. CATALANO, P.C.**  
Patent, Trademark & Copyright Attorney  
The Avanti Building ■ 810 South Cincinnati ■ Suite 405  
Tulsa, Oklahoma 74119-1612  
Telephone (918) 584-8787  
Facsimile (918) 599-9889

April 24, 2003

**Box NEW APP FEE**  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: Application for Registration of Mark: X SCENT (Design)  
Based on *Bona Fide* Intent-to-Use the Mark in Commerce  
Applicant: ARCTICSHIELD, INC.  
Reference No.: 2299D.03C

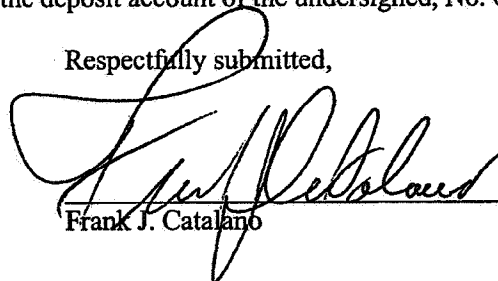
Dear Sir:

Enclosed please find the following for registering the above-referenced mark based on the Applicant's *bona fide* intent to use the mark in commerce:

- \* Application for registration based on Intent-to-Use pursuant to Section 1(b) of the Lanham Act;
- \* Power of Attorney;
- \* Signed Declaration in Support of Registration;
- \* Drawing Page;
- \* Check in the amount of \$335, the fee for filing this application; and
- \* A Return-Addressed Post Card.

Please send all communications to Frank J. Catalano. The Commissioner is authorized to charge any additional costs or credit any overpayments to the deposit account of the undersigned, No. 03-1127.

Respectfully submitted,



Frank J. Catalano

FJC:ms  
Enclosures  
EXPRESS MAIL #ET229398978US

PTO Form 1478 (Rev 9/98)  
OMB Control #0651-0009 (Exp. 08/31/2004)

# **\*Trademark/Service Mark Application\***

**\* To the Commissioner for Trademarks \***

<DOCUMENT INFORMATION>  
<TRADEMARK/SERVICEMARK APPLICATION>  
<VERSION 1.22>

<APPLICANT INFORMATION>  
<NAME> ARCTICSHIELD, INC.  
<STREET> 905 S. 9th, Suite D  
<CITY> Broken Arrow  
<STATE> OK  
<COUNTRY> USA  
<ZIP/POSTAL CODE> 74012

<APPLICANT ENTITY INFORMATION>  
<CORPORATION: STATE/COUNTRY OF INCORPORATION> Oklahoma

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> X SCENT

<TYPED FORM> No  
~ Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). ~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>  
<INTENT TO USE: SECTION 1(b)> Yes  
~ Applicant has a bona fide intention to use or use through a related company the mark in commerce on or in connection with the below-identified goods/services. (15 U.S.C. §1051(b), as amended.) ~  
<INTERNATIONAL CLASS NUMBER> 025  
<LISTING OF GOODS AND/OR SERVICES> Clothing, namely, gloves, mittens, footwear, socks, neckwear, muffs, bib overalls, jackets and coveralls

<ATTORNEY INFORMATION>  
<NAME> Frank J. Catalano  
<STREET> 810 S. Cincinnati, Suite 405  
<CITY> Tulsa  
<STATE> OK  
<COUNTRY> USA

<ZIP/POSTAL CODE> 74119  
<FIRM NAME> Frank J. Catalano, P.C.  
<TELEPHONE NUMBER> (918) 584-8787  
<FAX NUMBER> (918) 599-9889  
<ATTORNEY DOCKET NUMBER> 2299D.03C

<FEE INFORMATION>  
<TOTAL FEES PAID> 335  
<NUMBER OF CLASSES PAID> 1  
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>  
<E-MAIL ADDRESS FOR CORRESPONDENCE> N/A

<SIGNATURE AND OTHER INFORMATION>

~ **PTO-Application Declaration:** The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true. ~

<SIGNATURE>  \* please sign here\*

<DATE> 4-24-03

<NAME> Dave W. Gordon

<TITLE> CEO

The information collected on this form allows the PTO to determine whether a mark may be registered on the Principal or Supplemental register, and provides notice of an applicant's claim of ownership of the mark. Responses to the request for information are required to obtain the benefit of a registration on the Principal or Supplemental register. 15 U.S.C. §§1051 et seq. and 37 C.F.R. Part 2. All information collected will be made public. Gathering and providing the information will require an estimated 12 or 18 minutes (depending if the application is based on an intent to use the mark in commerce, use of the mark in commerce, or a foreign application or registration). Please direct comments on the time needed to complete this form, and/or suggestions for reducing this burden to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington D.C. 20231. Please note that the PTO may not conduct or sponsor a collection of information using a form that does not display a valid OMB control number.

— EXHIBIT 9 —

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 76/509381

**APPLICANT:** ARCTICSHIELD, INC.

**CORRESPONDENT ADDRESS:**

FRANK J. CATALANO  
FRANK J. CATALANO, P.C.  
810 S. CINCINNATI, SUITE 405  
TULSA OK 74119

**RETURN ADDRESS:**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
**ecom102@uspto.gov**

**MARK:** X SCENT

**CORRESPONDENT'S REFERENCE/DOCKET NO:** 2299.03C

**CORRESPONDENT EMAIL ADDRESS:**

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.**

Serial Number 76/509381

The assigned examining attorney has reviewed the referenced application and determined the following.

### PRIOR PENDING APPLICATION

Although the examining attorney has searched the Office records and has found no similar *registered* mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), the examining attorney encloses information regarding pending Application Serial No. 78110238. 37 C.F.R. Section 2.83.

There may be a likelihood of confusion between the applicant's mark and the mark in the above noted application under Section 2(d) of the Act. The filing date of the referenced application precedes the applicant's filing date. If the earlier#filed application matures into a registration, the examining attorney may refuse registration under Section 2(d).

## **INFORMALITIES**

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following informalities.

### **Disclaimer**

The applicant must insert a disclaimer of the descriptive wording "SCENT" in the application. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.09(a)(i). The wording SCENT is descriptive, if the clothing is of the type which eliminates or shields a hunter's scent.

A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use "SCENT" apart from the mark as shown.

### **APPLICANT'S RESPONSE**

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

Karla Perkins  
/Karla Perkins/  
Trademark Examining Attorney  
Law Office 102  
703-308-9102 ext. 169  
ecom102@uspto.gov

### **How to respond to this Office Action:**

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>



**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.**

Print: Sep 13, 2003

78110238

**TYPED DRAWING**

**Serial Number**

78110238

**Status**

NOTICE OF ALLOWANCE - ISSUED

**Word Mark**

EX-SCENT

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

Saramar, L.L.C. Limited Liability Company DELAWARE 125 South Wacker  
Drive, Suite 300 Chicago ILLINOIS 60606

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: thermal  
underwear, tops and bottoms, shirts, t-shirts, pants, turtlenecks,  
mock turtlenecks, underwear.

**Filing Date**

2002/02/21

**Examining Attorney**

HELLA, AMY

**Attorney of Record**

Esq.

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 76/509382

**APPLICANT:** ARCTICSHIELD, INC.

**CORRESPONDENT ADDRESS:**

FRANK J. CATALANO  
FRANK J. CATALANO, P.C.  
810 S. CINCINNATI, SUITE 405  
TULSA OK 74119

**RETURN ADDRESS:**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
**ecom102@uspto.gov**

**MARK:** X SCENT

**CORRESPONDENT'S REFERENCE/DOCKET NO:** 2299D.03C

**CORRESPONDENT EMAIL ADDRESS:**

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

## OFFICE ACTION

**TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.**

Serial Number 76/509382

The assigned examining attorney has reviewed the referenced application and determined the following.

### PRIOR PENDING APPLICATION

Although the examining attorney has searched the Office records and has found no similar *registered* mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), the examining attorney encloses information regarding pending Application Serial No. 78110238. 37 C.F.R. Section 2.83.

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## **INFORMALITIES**

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## **APPLICANT'S RESPONSE**

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

Karla Perkins  
/Karla Perkins/  
Trademark Examining Attorney  
Law Office 102  
703-308-9102 ext. 169  
ecom102@uspto.gov

### **How to respond to this Office Action:**

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To respond formally via E-mail, visit <http://www.uspto.gov/web/trademarks/tmelecresp.htm> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

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**FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.**

Print: Sep 13, 2003

78110238

**TYPED DRAWING**

**Serial Number**

78110238

**Status**

NOTICE OF ALLOWANCE - ISSUED

**Word Mark**

EX-CENT

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

Saramar, L.L.C. Limited Liability Company DELAWARE 125 South Wacker  
Drive, Suite 300 Chicago ILLINOIS 60606

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: thermal  
underwear, tops and bottoms, shirts, t-shirts, pants, turtlenecks,  
mock turtlenecks, underwear.

**Filing Date**

2002/02/21

**Examining Attorney**

HELLA, AMY

**Attorney of Record**

ESQ.